

1 the discovery of the financial records from the
2 Selena Fan Club, which have been shown by this
3 tape, which we have introduced as Defendant's
4 Exhibit 1, to exist and to exist for several
5 months.

6 The failure to provide that
7 information had a profound affect on the
8 presentation of this case, in that it caused
9 the defense to not know what they might be
10 faced with in the event that they placed the
11 defendant on the stand. We feel that the
12 subsequent discovery of the existence of this
13 material warrants the Court's consideration of
14 our motion for new trial, so that this lady can
15 examine what it is that they claim to have
16 against her byway of extraneous offenses and
17 answer those charges and be allowed to take the
18 stand in her own defense, if she chooses to do
19 so, and knowing all the while what it is that
20 she's being faced with.

21 The second point that I would like to
22 address in argument is the matter of the
23 criminal records of the Witness Martinez.
24 That, again, has resulted in the denial of due
25 process and effective assistance of counsel by

1 hiding, that is not completely resolved yet.

2 MR. TINKER: Well, Your Honor, they, at
3 least I'm --

4 THE COURT: Someone may be not making
5 them available, I think is a better way to characterize
6 it.

7 MR. TINKER: 404(b) --

8 THE COURT: But let me remind you, this
9 Court has not fully resolved that issue. That's still
10 before the Court.

11 MR. TINKER: 404(b) requires them --
12 first, I say: That's an extraneous offense. They are
13 going to say I'm an embezzler when I'm being tried for
14 murder -- that's an extraneous offense. 404(b) says that
15 they are required to tell us when, where and how it
16 happened, and the Harrell case, which I cited in my
17 motion, 884 SW 2d at 154 says that there has to be a
18 hearing outside the presence of the jury, and they have to
19 convince Your Honor beyond a reasonable doubt that the
20 accusation in this case of the embezzlement is true before
21 you permit the jury to hear it. It does not have to be a
22 conviction, but you have to become convinced that it is a
23 true allegation. And in addition to that, you have to
24 decide whether or not the relevance, if it is relevant,
25 outweighs the harm that is done by introducing this

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1 MR. TINKER: Oh, you're talking about
2 those records? Is that what you're referring to?

3 THE COURT: Yes.

4 MR. TINKER: What kind of stamp?

5 THE COURT: Bates stamp. That's civil
6 law stuff. But you know what --

7 MR. TINKER: I, not only I don't know
8 it, but I have never been accused of knowing it.

9 THE COURT: Well, for everybody's
10 information, those, in civil cases, they're just a
11 numerical pagination on any scrap of paper that is given,
12 so that you have something to refer to.

13 MR. TINKER: Your Honor, I just noticed
14 that defendant's motion over here, to suppress statement,
15 that's already been denied. I'll make a note.

16 THE COURT: All right.

17 MR. TINKER: Your Honor, I have the
18 Defendant's Motion for Preliminary Determination of
19 Extraneous Offenses, and it speaks, for the Court, to
20 itself.

21 I also have a 404(b) motion that requires
22 them to notify me on demand. Not only do I have a 404(b)
23 motion, I sent a certified letter to their office
24 requesting that. That's --

25 THE COURT: Well, I think -- let me

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1 interrupt you a moment. I think our first question here
2 is to define what we mean by "extraneous offense," and I
3 guess I'm going to have to do that ultimately, but I'll
4 certainly hear you all's views on that.

5 MR. VALDEZ: Very good point, Judge. I
6 don't think we have any extraneous offenses and, by that,
7 I mean any criminal convictions that we plan to introduce.

8 There are -- there is going to be some
9 evidence introduced about the fact that Mr. Quintanilla
10 thought that the defendant was embezzling funds from him.
11 Now, there is a difference there, Judge, between thinking
12 somebody is doing it and somebody actually doing it.
13 There won't be any evidence introduced -- at least not
14 from the State -- about any funds being embezzled or
15 anything like that. Now, Mr. Tinker may go into that;
16 that seems like what he wants to do. But our position is
17 going to be that we're going to introduce evidence that
18 Mr. Quintanilla thought that the defendant was embezzling
19 funds and confronted her about that.

20 THE COURT: Well, why is that relevant
21 in your case in chief?

22 MR. VALDEZ: It goes to motive, Judge,
23 and if --

24 THE COURT: What he thinks goes to
25 motive?

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1 MR. VALDEZ: Well, not just what he
2 thinks; what he did after he formed this thought process.

3 THE COURT: Okay. All right.

4 MR. VALDEZ: Because there was a --

5 THE COURT: So you're claiming it's
6 just part of the res gestae of the case?

7 MR. VALDEZ: The motive leading up to
8 the shooting; yes, sir.

9 MR. TINKER: Your Honor, that's an
10 extraneous offense. No question about it.

11 MR. VALDEZ: No, there is a very big
12 question about it. It's a --

13 THE COURT: Well, he is talking now.

14 MR. TINKER: If somebody says to a jury
15 that is trying me for murder, and says that I'm also an
16 embezzler, that's my belief, that's introducing an
17 extraneous crime. Now, whether the jury believes it is
18 another question, but what the prosecution is trying to do
19 is, they're trying to let that witness testify that he
20 believes that my client is an embezzler, but they are
21 hiding the records which will help us prove that that's
22 not so. They can't have it both ways. They cannot have
23 it both ways.

24 Secondly, again, why is it admissible?

25 THE COURT: When you say they're

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1 extraneous matter. And that's what the Harrell case says,
2 and that's what I'm requesting from the Court.

3 THE COURT: Did the State have a chance
4 to brief this?

5 MR. VALDEZ: I don't have a brief,
6 Judge, but I do have the case, the Moreno case from the
7 Court of Criminal Appeals.

8 THE COURT: Okay.

9 MR. VALDEZ: That's the capital murder
10 case in which the state introduced -- I'm sorry; the cite
11 is --

12 THE COURT: Well, now, Counsel, when
13 you say "capital murder case," that puts up a big red flag
14 because, as you know, those cases are different on this
15 issue.

16 MR. VALDEZ: Well, not exactly the way
17 we're doing the issue, Judge.

18 THE COURT: Well, that's the way the
19 Court views it.

20 MR. VALDEZ: Can I tell you --

21 THE COURT: You'd better get something
22 other than a capital murder case.

23 MR. VALDEZ: -- what the case says?

24 THE COURT: You can tell me, but the
25 Court knows from trying capital murder cases that just

1 about anything can come in, in a capital murder case.

2 MS. STERLING: On punishment.

3 MR. VALDEZ: On punishment, Judge.

4 This is on guilt-innocence.

5 THE COURT: Okay. Well, I will hear
6 it.

7 MR. VALDEZ: And what the State was
8 trying to introduce, the case involved a kidnapping and
9 murder, and there was some evidence that the defendant had
10 told police officers that he had thought about kidnapping
11 somebody else. The State introduced that evidence, that
12 the defendant thought about killing somebody else. Well,
13 the defense objected, saying that's an extraneous offense
14 that they hadn't told the defense about.

15 The Court said: No, it's not. Thoughts are
16 never extraneous offenses. You have to have an overt act
17 and possibly also a conviction before it can be an
18 extraneous offense. Thinking about it, like we're saying
19 here this case, it's not an extraneous offense. It's just
20 that: A thought.

21 The decision was written by Sam Houston
22 Clinton, Judge, and it's a decision out of the Court of
23 Criminal Appeals. So I think that goes exactly to the
24 point that I'm talking about.

25 THE COURT: I will consider that. Did

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1 you bring it?

2 MR. VALDEZ: I don't have a copy for
3 Mr. Tinker, but I'd make one available.

4 THE COURT: All you have to do is give
5 him the cite.

6 MR. VALDEZ: It's 858 Southwest 2d 453.

7 MR. TINKER: Your Honor, what year was
8 that written?

9 MS. STERLING: 1993.

10 MR. TINKER: Your Honor, I have a case,
11 which is not a capital murder case -- it's Harrell, and I
12 have got a copy for counsel -- and it just says: Standard
13 admissibility of extraneous offense evidence is proof
14 beyond a reasonable doubt. And, two, the trial court must
15 determine that the jury may find beyond a reasonable doubt
16 that the defendant committed extraneous offenses before
17 admitting the evidence -- before admitting the evidence.

18 That's what it says.

19 THE COURT: Let me see those cases.
20 And I think we'll just quit right now. I will read these
21 and I will give you a ruling when we get back.

22 MR. TINKER: When will we be back,
23 Judge?

24 MR. VALDEZ: 2:00?

25 THE COURT: Can we finish today?

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1 MR. TINKER: Yes, I believe we can,
2 Your Honor.

3 THE COURT: All right. Recess.

4 All right, on the issue where we're going I'm
5 going to be working on that through the noon hour, and
6 then we'll probably have an announcement.

7

8 (Noon recess.)

9

10 (Proceedings resumed as follows with all
11 parties present and represented as before
the noon recess.)

12 THE COURT: Okay. A little unfinished
13 business. First of all, I have read the cases and I will,
14 I agree with the State that they can get in the kinds of
15 evidence they're talking about at this point.

16 MR. TINKER: Concerning what issue?

17 THE COURT: Concerning the issue of the
18 alleged --

19 MR. TINKER: Extraneous matters.

20 THE COURT: That's your
21 characterization. The business about the belief of
22 embezzlement.

23 MR. TINKER: Well, in that regard, Your
24 Honor, if the Court is going to permit that, it's my
25 position that -- and we'll go into the records -- but

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1 MR. TINKER: He can say yes or no to
2 the first question.

3 THE COURT: That's correct.

4 Q. (By Mr. Valdez) Now, as a result of what you
5 found out, did you do something?

6 A. Can you repeat the question?

7 Q. As a result of the information you received,
8 did you do anything?

9 A. Yes, sir.

10 Q. What did you do?

11 A. I had called Yolanda, and confronted her with
12 this.

13 Q. When was that?

14 A. It was the latter part of January of this year.

15 Q. And what did you ask her?

16 A. I asked her why all of a sudden I'm getting a
17 lot of phone calls and letters from mothers
18 claiming that their children had sent in the annual
19 fee and were not getting their packages.

20 Q. What was her response?

21 A. She said that they were lying, that they only
22 wanted a second package for free.

23 Q. So did you do any further investigation?

24 A. I did.

25 Q. And, as a result of that investigation, did you

1 do anything?

2 A. Yes, I did.

3 Q. What did you do?

4 A. I went to San Antonio and I recovered all
5 the --

6 MR. TINKER: Your Honor, may we
7 approach the bench?

8 (Discussion at the bench.)

9 MR. TINKER: Your Honor, we attempted
10 to discover these records, we were prohibited from
11 doing so.

12 Well, you gave us records; but
13 they're not these fan club records that he
14 obtained.

15 They filed a motion to suppress. All
16 we got was what the District Attorney's Office had,
17 not what this witness had. At the time, counsel
18 said we're just going to ask him if he suspected
19 embezzlement, he said. They're going into details
20 of this and we don't have any records to look at.
21 We tried to find them ahead of time.

22 MR. VALDEZ: I haven't asked him
23 anything about records.

24 MR. TINKER: Well, he just asked
25 him: Did you go? And he said he went and got

1 records. And I'm saying that we tried to discover
2 these and have not been able to do so.

3 THE COURT: At this time, I don't
4 sustain the objection to this line of questioning,
5 but any details about it I would.

6 Q. (By Mr. Valdez) Mr. Quintanilla, as a result
7 of your further investigation in this matter, did
8 you form an opinion or form any suspicions about
9 the activities of Yolanda Saldivar?

10 A. I did.

11 Q. What were -- what was that opinion or
12 suspicion?

13 A. That she was taking money from the fan club.

14 Q. And did you take any action after that, after
15 you formed this suspicion?

16 A. I talked to her and told her that I wanted to
17 bring all the records to our office. And that from
18 this point on that we were going to run the fan
19 club through our office, because Selena's image was
20 being tarnished because people were blaming her.

21 Q. Did you talk to her in person or on the phone?

22 A. In person, there in our office.

23 Q. Do you remember when that meeting occurred?

24 A. You're talking about the first -- the very --

25 Q. The meeting that you're talking about, when you

1 A. Well, I had recovered the records for the fan
2 club, and we found proof that she was stealing.

3 MR. TINKER: Your Honor --

4 Excuse me.

5 I object to this. He's now
6 testifying about the records that we've been trying
7 to get him to show us at this time.

8 THE COURT: I'm going to sustain the
9 objection, for now.

10 MR. TINKER: I request that the jury
11 be instructed to disregard. If we can't see those
12 records, he shouldn't be testifying about them.

13 THE COURT: That is my instruction,
14 for now. We'll have a hearing on this matter.

15 As a matter of fact, members of the
16 jury, I think we'll dismiss you at this time. And
17 have a nice lunch, and we'll see you back here at
18 1:00 o'clock.

19 (Jury released to jury room -
20 11:30 a.m.)

21 MR. TINKER: Are we still in session,
22 Your Honor?

23 THE COURT: Yes, we are. You may
24 proceed.

25 MR. TINKER: Well, when you're

1 Suzette; and me and the defendant.

2 Q. Yolanda Saldivar?

3 A. Yes, sir.

4 Q. And what happened at the meeting?

5 A. Well, I showed her some documents that we
6 had -- that we had found.

7 MR. TINKER: Your Honor, again, I'm
8 going to object, unless I'm going to be permitted
9 to see the documents that he claims he showed her.

10 THE COURT: Overruled.

11 Q. (By Mr. Valdez) And what else happened? What
12 did you do after that?

13 A. I proceeded to question her about these
14 documents.

15 Q. And what did you question her about?

16 A. Who this Yvonne Peralez was.

17 Q. And did the defendant have any answers?

18 A. Her answer was, "I don't know."

19 Q. Did you at that time make any threats to the
20 defendant, any physical threats?

21 A. No, sir.

22 Q. Did you make any other kind of threats?

23 A. No, sir.

24 Q. Did you tell her you were going to take any
25 type of action?

1 A. At the end of the meeting, I did.

2 Q. What did you tell Yolanda Saldivar that night?

3 A. I told her that I was going to go to the police
4 and make an investigation for embezzlement.

5 Q. Excuse me?

6 A. I told her that I was going to go in the
7 morning and proceed to make an investigation of
8 embezzlement.

9 Q. And did the defendant answer you? Did she have
10 any answers for you that night?

11 A. No, sir.

12 Q. What time did the meeting occur?

13 A. It was set for, I think, around 8:00 o'clock,
14 but she showed up late. She was one hour late.
15 She got there about 9:00 o'clock.

16 Q. And this was on Thursday, March 9th?

17 A. March the 9th.

18 Q. Did you do anything else that night, you
19 yourself, with regards to the defendant, Yolanda
20 Saldivar?

21 A. Well, just, I mean, we proceeded to question
22 her; me and my daughter Selena, and my other
23 daughter.

24 Q. How long did the meeting last?

25 A. Approximately around 30 minutes.

1 Q. By doing what?

2 A. I guess file it through the court, take it to
3 the hands of the law.

4 Q. Was there any reaction from Yolanda Saldivar?

5 A. No, not really. She just looked like she
6 didn't have an answer to any of the questions.

7 Q. And that happened on March 9th?

8 A. It was a Thursday.

9 Q. Do you remember what time the meeting was?

10 A. I can't. Around 8:00 or 9:00; it was already
11 dark outside.

12 Q. What happened after the meeting, if anything?
13 What did you do?

14 A. I got up and I got kind of close to Yolanda in
15 the face and I pointed to her and I told her that
16 she was a liar and she was a thief.

17 Q. Did you threaten her at any time with physical
18 violence?

19 A. No. Never.

20 Q. Did you see her after that?

21 A. No, I did not.

22 Q. Had you seen her before today in court?

23 A. No.

24 Q. Had you talked to her at all?

25 A. No.

1 basis?

2 A. Oh, yeah. Yes.

3 Q. Now, how involved was Yolanda Saldivar in
4 helping Selena run the business, if she was?

5 A. She was pretty involved. She was on the
6 account, she could write checks for -- she had her
7 own checks with, you know, she had the -- how would
8 you say -- she needed to withdraw money or deposit
9 money, she, you know, she had that much freedom, I
10 guess you would say, or, you know.

11 Q. Did she have authority to withdraw funds
12 whenever she wanted to?

13 A. Yes.

14 Q. Did she have authority to write checks?

15 A. Yes.

16 Q. Did she have any credit cards?

17 A. Yes, she did.

18 Q. And would she use those?

19 A. Yes.

20 Q. Was she on all the checking accounts that the
21 business had as a signatory?

22 A. Having to do with the business, yes.

23 Q. She was?

24 A. Having to do with the business, yes.

25 Q. Did you remove Yolanda Saldivar from the

1 checking accounts --

2 A. Yes, we did.

3 Q. -- at any time?

4 A. Yes, we did.

5 Q. Do you remember when that was, Mr. Perez?

6 A. The exact date, no. I remember going to the
7 bank and doing it, Selena and I.

8 Q. Do you remember the approximate date?

9 A. I believe it was in April, maybe March, the end
10 of April, beginning of March, somewhere around in
11 there, or the middle of March.

12 Q. Middle of March?

13 A. The middle of March.

14 Q. Was it while Selena was still alive?

15 A. Yes. We both went to the bank to do it.

16 Q. And why did you do that, Mr. Perez?

17 MR. TINKER: Your Honor, I'm going to
18 object to that. It calls for hearsay.

19 THE COURT: Overruled.

20 MR. VALDEZ: He's a direct witness,
21 Your Honor, it doesn't call for hearsay. It calls
22 for the reason why he removed the defendant from
23 the checking account.

24 THE COURT: Overruled.

25 A. Selena and I didn't trust her.

1 Q. Had you threatened her in any way?

2 A. Never.

3 Q. Had you hired anybody to threaten her?

4 A. Never.

5 Q. Why did you confront Yolanda at that meeting,
6 Thursday night, March the 9th?

7 A. I don't understand your question.

8 Q. Why did you -- you said you got in her face.
9 Why did you do that?

10 A. Because I know that she was lying.

11 Q. Did you talk to Selena after that meeting that
12 night?

13 A. No. She was recording that night and I wasn't
14 able to talk to her.

15 Q. Do you know whether or not Yolanda was fired?

16 MR. TINKER: Your Honor, again calls
17 for hearsay and I object to it.

18 THE COURT: Overruled.

19 MR. TINKER: I'd like to ask her if
20 she was present if that occurred.

21 THE COURT: I overrule the objection.

22 Q. (By Mr. Valdez) Do you know whether or not she
23 was fired?

24 A. That night?

25 Q. No. At any time?

1 A. Yes.

2 Q. Did you talk to Selena at any time after that?

3 A. Yes.

4 Q. When was that?

5 A. Oh, about a week or two after the meeting, on a
6 Saturday.

7 Q. Is that the Saturday before she was killed?

8 A. Yes, it was.

9 Q. Where did you talk to Selena?

10 A. At my home.

11 Q. And what was that conversation about?

12 MR. TINKER: Your Honor, I object to
13 that unless -- I know that Your Honor is making
14 rulings on this; but if he's claiming it's not for
15 the truth of the matter, I would request the jury
16 be instructed that that's true. It is hearsay.

17 MR. VALDEZ: This is an exception to
18 the hearsay rule under 8033, Your Honor; emotional,
19 mental and physical, emotional intent or plans by
20 Selena.

21 MR. TINKER: Your Honor, that rule
22 does not apply in this case. It is hearsay, I
23 object to it. Secondly, if they're offering it not
24 for the truth of the matter, I want an instruction
25 to the jury in that regard. So I ask --

1 THE COURT: Why is it not a
2 exception?

3 MR. TINKER: I'd rather take this up
4 outside the presence of the jury.

5 THE COURT: All right.

6 Actually, members of the jury, I need
7 to take a break, so we'll just go on break and you
8 can be gone up to 20 minutes, but you don't want to
9 go longer than that.

10 (Recess -- 2:10 - 2:30 p.m.)

11 THE COURT: You want to summarize?

12 MR. TINKER: Just that counsel has
13 said there's exception to the hearsay. What I
14 don't recall is whether he was saying that he
15 agrees that it's not offered for the truth of the
16 matter. Has he agreed with that part of it?

17 THE COURT: Yes.

18 MS. STERLING: No.

19 MR. VALDEZ: That it is. That it is
20 for the truth.

21 MS. STERLING: Correct. We don't
22 agree that it's not.

23 THE COURT: The Court was momentarily
24 misunderstanding.

25 MR. TINKER: It's clearly a hearsay

1 statement of Selena. Selena's not here for us to
2 cross-examine. It is not a present sense about the
3 offense itself, which is when that rule can come
4 into play. Going to fire doesn't have anything to
5 do with the shooting and I object. We can't
6 cross-examine Selena, she's not here, she's not
7 available as a witness.

8 THE COURT: The Court believes it is
9 an exception. Did you look at my book?

10 MS. SAUM: No. I didn't look up
11 there.

12 THE COURT: Does someone have a copy
13 of the rules?

14 MR. TINKER: We have a copy of the
15 rules.

16 MS. SAUM: I just don't know where
17 that blue book is.

18 THE COURT: What's the rule you're
19 relying on?

20 MR. VALDEZ: 8033, Your Honor. The
21 declarence then existing --

22 THE COURT: I'm reading it. I'll
23 stand by that rule.

24 You may proceed.

25 MR. TINKER: I'd just like to add one

1 thing. Counsel's suggestion, saying I'm going to
2 fire Selena is not a statement of state of mind,
3 it's a statement of what she's going to do. That's
4 not saying -- the state of mind is: I was fearful,
5 I was frightened, those kinds of things.

6 MR. VALDEZ: Intent.

7 THE COURT: Well, under the rule I'm
8 going to overrule it.

9 All right. We ready for the jury?

10 MR. TINKER: Yes, Your Honor.

11 THE COURT: Please, be seated.

12 MR. VALDEZ: Your Honor, before we
13 begin, may we approach the bench?

14 THE COURT: All right.

15 (Discussion at the bench.)

16 MR. VALDEZ: After this witness we've
17 got two other witnesses available and we just
18 wanted to let the Court know for purposes of
19 scheduling we don't have any other people here.

20 THE COURT: That's fine. Go with
21 anything you can.

22 MR. VALDEZ: All right.

23 THE COURT: All right.

24 MR. TINKER: May I approach the
25 bench, Your Honor?

1 THE COURT: Yes.

2 (Mr. Tinker hands the Court some
3 papers.)

4 THE COURT: All right.

5 You may proceed.

6 Q. (By Mr. Valdez) Suzette, do you realize you're
7 still under oath?

8 A. Yes, I do.

9 Q. You were telling us before we broke about
10 talking to Selena the Saturday before she was
11 killed?

12 A. Yes.

13 Q. And where did you talk to her?

14 A. At my home.

15 Q. And did she tell you what she was planning to
16 do?

17 A. Yes.

18 Q. With the business, as far as the business is
19 concerned?

20 A. Yes.

21 Q. Did she tell you what she was planning to do as
22 far as Yolanda Saldivar?

23 A. Yes.

24 Q. What did she tell you?

25 A. She said that she was going to fire Yolanda

1 because she thought she was embezzling from her
2 company.

3 Q. Do you know whether or not Yolanda Saldivar was
4 working for Selena on March 9th when you had that
5 meeting?

6 A. I don't know that.

7 Q. Do you remember March 9th, the Thursday when
8 you had the meeting at Q Productions?

9 A. Yes.

10 Q. Was Yolanda an employee of Selena on that day?

11 A. I believe so, I'm not too sure.

12 Q. If she was an employee, was she a full-time
13 employee?

14 A. I don't know.

15 MR. TINKER: Your Honor, if she
16 doesn't know -- she says she doesn't know, and I
17 object to him trying to get her to answer the
18 question.

19 THE COURT: Sustained.

20 Q. (By Mr. Valdez) Do you know whether or not
21 Yolanda Saldivar had another job at that time?

22 A. No. She did not have another job.

23 Q. Where were you when you first heard that Selena
24 had been killed?

25 A. At my home.

1 (Start time - 8:40 a.m.)

2 THE COURT: All right. Gentlemen, we
3 ready for the jury?

4 MR. TINKER: Your Honor, I have a
5 couple of matters. I actually just did some
6 research concerning the issue in the hearsay
7 question and I have a case, which in my view,
8 supports our position that hearsay statements that
9 have been coming in under 803 are not admissible
10 under the case of Norton vs. State, 771, S.W. 2d.,
11 160. I'd like to tender those to the Court. I
12 have highlighted Page 165, Your Honor.

13 THE COURT: Thank you.
14 Anything further?

15 MR. TINKER: Yes, I do, Your Honor.
16 It's my understanding that the prosecution has
17 brought a person to be a witness called Debra
18 Ramirez. I know in her statement she makes
19 statements like, "I didn't trust Yolanda." That's
20 character traits, it's not an issue in this crime.
21 I'm going to object to that and request the
22 prosecutor be instructed for this witness or any
23 other witness whether they did or did not trust
24 Yolanda. It's again not appropriate, particularly
25 that reflects on traits of character and opinion,

1 that part. It's certainly inconsistent with the
2 position they take here.

3 THE COURT: Gentlemen and lady, it
4 appears to be exactly the same kind of testimony,
5 so I will conclude later this issue if you wish to
6 argue but for now bring in the jury.

7 MR. TINKER: Your Honor, excuse me.
8 Could I address the Court briefly? You did sustain
9 the objection at this point?

10 THE COURT: That's correct.

11 MR. TINKER: Your Honor, yesterday
12 before we were able to take up all this, we
13 continue to object to statements just like this
14 from other witnesses. So I request that at some
15 point in time that you instruct the jury to
16 disregard. And we may have to go back over and
17 make notes about exactly what it was to disregard
18 the testimony of others that were permitted to
19 testify over our objections.

20 THE COURT: I don't necessarily agree
21 with your evaluation.

22 MR. TINKER: I request, Your Honor --

23 THE COURT: I understand the request,
24 but it's overruled.

25 MR. TINKER: I request that you

1 instruct them to disregard any statement by any
2 other witness in which they testified she was going
3 to go over there -- Selena said she was going to go
4 over there and fire Yolanda.

5 THE COURT: Overruled.

6 All right bring in the jury.

7 Please be seated.

8 Q. (By Ms. Sterling) So what time did Selena
9 leave the boutique that night?

10 A. Around 8:30.

11 Q. And is that the last time you saw her?

12 A. That night I followed her home.

13 Q. I'm sorry?

14 A. I followed her home.

15 Q. You followed her home? Why did you do that?

16 A. I just wanted to make sure she got home okay.

17 Q. Were you worried about her?

18 A. Yes.

19 MR. TINKER: Excuse me.

20 Your Honor, she responded to the
21 question and then counsel suggested an additional
22 answer. I object to that. It's leading.

23 THE COURT: Overruled.

24 Q. (By Ms. Sterling) Were you worried about her?

25 A. Yes, I was.

1 Exhibits; the tapes, the log that are on that one
2 pad, and then the notes that were created by those
3 assisting Mr. Young and Mr. Valencia during the
4 negotiations of Yolanda Saldivar. And my
5 recollection is I had an objection. I had no
6 objection to the custodial capacity as far as
7 Exhibit 15 was concerned, but I informed the Court
8 that I did object to the contents of 15. That's my
9 recollection, and I would think it would be
10 appropriate that if the jury is going to go eat
11 lunch or whatever they're going to see, if we
12 couldn't find that in the record before you permit
13 that to go to the jury.

14 MR. SKURKA: I don't have it in my
15 notes that he made that objection, but I don't have
16 a problem with the court reporter finding that part
17 and making sure that's what it said.

18 THE COURT: Sure.

19 MR. TINKER: Again, also with regard
20 to the Exhibit that Counsel referred to in his
21 testimony about there was a letter that was
22 asked that said they hadn't got her money, that
23 some fan hadn't gotten their money, that's just
24 exactly the kind of thing that interjects
25 extraneous matters in this case that are contained

1 in some of these Exhibits. That's exactly the kind
2 of reason that I say all of these should not go to
3 the jury. With regard to that specific one of
4 Counsel knows where it is, I ask him to take it
5 out.

6 MR. SKURKA: Well, that's the one
7 that corroborated what Abe Quintanilla said that he
8 had been getting complaints.

9 MR. TINKER: Well, there's no sponsor
10 to it, and that's the problem with it. They
11 introduced this but without any testimony
12 concerning it.

13 THE COURT: All right. We'll look at
14 the record and discuss this matter. They have to,
15 according to the Codes of Criminal Procedure,
16 request Exhibits.

17 MR. TINKER: And there are Exhibits
18 that they said they've taken out, and I guess --

19 THE COURT: Those need to be put in
20 an envelope.

21 MR. SKURKA: Yeah. That's the one in
22 the top corner? I just didn't have an envelope to
23 put them in.

24 MR. TINKER: I just want to get them
25 out this.

1 MR. SKURKA: Judge, Mr. Valdez and I
2 have looked at State's Exhibit 15, and we don't
3 mind, we'll just withdraw that so that will take
4 care of the objection for it going to the jury.

5 THE COURT: And what about the
6 briefcase?

7 MR. TINKER: Well, they have, with
8 regard to -- we ought to have the Exhibit here.
9 With regard to Exhibit 122, Your Honor, I object to
10 any of the contents. They have excluded some
11 items, there are some stacks of letters that are
12 unexplained documents, bank records. There have
13 been no sponsoring witnesses, it just happened to
14 be something that was in the truck, it's not
15 explained by anybody, and, just, you don't know
16 what the jury will do with it if they get it.
17 That's why I object to it.

18 THE COURT: Response?

19 MR. SKURKA: Okay. Our position is
20 the evidence, the contents of the briefcase marked
21 122 are relevant for the following reasons:
22 Testimony adduced at trial was that the deceased
23 and her husband were trying to retrieve records of
24 their businesses before they terminated this
25 employee. The testimony also shows that this

1 briefcase was located in the defendant's truck, and
2 if the Court looks at the contents of the briefcase
3 itself, you'll see that there's every kind of
4 connection with Selena Quintanilla Perez and her
5 husband, Chris, and all their businesses and bank
6 records, financial statements, invoices, orders,
7 stuff like that, all those records that she wanted.

8 THE COURT: For now, why don't you
9 bring me everything that you think is relevant and
10 admissible?

11 MR. SKURKA: For the record, Your
12 Honor, that day that we first admitted this or
13 introduced this the Court asked us to go back and
14 pull stuff out of there that we weren't contesting
15 the relevancy. The stuff that we left is all
16 marked with Selena's business expenses, stuff
17 marked Selena Etc.

18 THE COURT: Okay. I see your notes.

19 MR. SKURKA: There's also insurance
20 records, tax stuff, all concerning the victim, and
21 her personal bank account, too, I think.

22 THE COURT: Why is this register in
23 there?

24 MR. SKURKA: Because it's addressed
25 to Selena Etc. They were trying to register her

1 for some kind of thing. It's addressed to Selena
2 or Selena Etc., I believe.

3 THE COURT: Okay. We've received our
4 first note.

5 First question: Eleven copies of the
6 charge, all prosecution evidence, all defense
7 evidence.

8 We will comply with that, but I'm
9 still working on the evidence.

10 MR. TINKER: Your Honor, I object to
11 sending any prosecution evidence in there.

12 THE COURT: Okay. That's noted.

13 All right. Let's have order. The
14 final question on this briefcase, Exhibit No. 122.
15 The Court has reviewed the contents and believes
16 that it's admissible.

17 MR. TINKER: Admissible?

18 THE COURT: Yeah.

19 MR. TINKER: Your Honor, just let the
20 record reflect I object to it.

21 THE COURT: Okay.

22 MR. TINKER: And I would request
23 that -- I don't guess -- there's any way they can
24 get that mixed up with something in some other
25 Exhibit. I would request that if it's sent back,

1 somewhere, is it not?

2 MS. SAUM: No, Your Honor. If I
3 could remind the Court we talked about the limiting
4 instruction on extraneous offenses or conduct
5 and --

6 THE COURT: Well, no. I meant --

7 MR. SKURKA: Which number three are
8 you looking at, Judge?

9 THE COURT: Oh, yeah. I'll refuse
10 that. I'll refuse number four; although aspects of
11 that are contained in my charge, and I also refuse
12 number five. You may proceed.

13 MR. TINKER: You refuse number five,
14 Your Honor?

15 THE COURT: Yes.

16 MR. TINKER: Each of those, Your
17 Honor, was specific requested instructions and at
18 this time I object. I think there are two ways to
19 preserve error with regard to the failure of the
20 Court to give certain instructions, and, first,
21 I've requested the instructions that this Court
22 gives and, secondly, now, I object to the Court not
23 giving those, and I request a ruling of the
24 Court --

25 THE COURT: Overruled.

1 request the issue, special requested instruction
2 concerning the testimony, concerning the theft or
3 allegation of theft that the jury heard in the
4 guilt/innocence stage of the trial. We requested
5 that and the Court did not include that at that
6 time. We reurge defendant's requested instruction
7 number three. And I have one that I'd like to file
8 at this time, which is defendant's request for
9 instruction, number three, and I tender to the
10 Court. I'll file it -- the request concerning
11 the --

12 THE COURT: All right. It will be
13 refused.

14 MR. TINKER: Your Honor, I also have
15 the requested instruction with regard to sudden ^{TR 150}
16 passion and adequate cause that we request.

17 THE COURT: Well, this is new law so
18 I better look at this. When did that become
19 effective?

20 MR. VALDEZ: Last year, Your Honor.

21 MS. STERLING: Seems like 1994.

22 MR. TINKER: September.

23 MR. VALDEZ: September 1.

24 THE COURT: You guys want to be heard
25 on this?

1 BE IT REMEMBERED that on the
2 21st day of December, 1995, the above entitled
3 and numbered cause came on for hearing before
4 the said Honorable Court, HONORABLE MIKE
5 WESTERGREN, Judge Presiding, and the following
6 proceedings were had:

7
8 THE COURT: Please be seated.

9 Court calls for hearing in motion for
10 new trial.

11 MR. MCGUIRE: Judge, I probably
12 oughta make a little statement, just to clarify
13 where we are, on the record.

14 On November 22nd, we prepared and
15 mailed to the 228th District Court, by
16 certified mail, an original motion for new
17 trial. On that same date, we filed an
18 identical original with the 214th in
19 Corpus Christi. The original motion that was
20 addressed to the 228th was apparently lost in
21 the mail.

22 On the 27th of November, which was
23 the deadline for filing a motion for new trial,
24 Miss Patricia Saum filed a notice of filing of
25 original affidavit of Clara Castro Sanchez, the

1 Defendant's Motion for New Trial, and filed as
2 an attachment to that a copy of the motion for
3 new trial, which we had made to the 228th
4 District Court.

5 So, I just wanted the record to
6 reflect where we were on the paperwork.

7 THE COURT: Duly noted.

8 MR. MCGUIRE: Okay. If the
9 Court is ready, we would call Arnold Garcia, to
10 the stand, Your Honor.

11 THE COURT: Okay. Is this a
12 factual matter?

13 MR. MCGUIRE: Yes, Your Honor.

14 (Witness Sworn.)

15 Your Honor, before beginning the
16 questioning of Mr. Garcia, there are couple of
17 other matters that we have discussed with the
18 district attorney's office that we might take
19 care of.

20 Abraham Quintanilla, the father of
21 Selena, appeared on a Spanish television show,
22 Premire Impacto, on December 5th of 1995. We
23 have a tape of that interview. We, also, have
24 an English translation copy, of which we have
25 provided to the district attorney's office;

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1 and it's my understanding that both sides are
2 agreeable to stipulating that the tape is an
3 accurate reproduction of the interview on
4 Premire Impacto, and that the -- the
5 translation is an accurate translation.

6 MR. SKURKA: That's correct,
7 Judge. Mr. Valdez viewed the tape -- not the
8 tape, but the program itself, and we've had the
9 transcript for a few days. We don't doubt the
10 authenticity of it.

11 MR. MCGUIRE: At this time,
12 then, Your Honor, we would offer, as
13 Defendant's Exhibits 1 and 2, the videotape and
14 the transcript.

15 THE COURT: Admit.

16 MR. MCGUIRE: Your Honor, the
17 purpose of this offer goes to the point that we
18 raised in the motion for new trial regarding
19 the discovery issue of the records which -- the
20 financial records of the Selena Fan Club. It's
21 my understanding that, during the trial, those
22 records were sought by the defense, that
23 records were provided to the Court by
24 Mr. Quintanilla, and that there was a
25 representation made that there were no relevant

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IS ON REC. EX. # 24